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December 7, 2004

VIA HAND DELIVERY AND E-MAIL

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

RE: Cape Light Compact, D.T.E. 03-99

Dear Secretary Cottrell:

The Cape Light Compact (the "Compact") petitioned the Department of Telecommunications and Energy (the "Department") for approval of a fifteen-month Pilot Project to serve Default Service customers in August of 2001. The Department approved the Pilot Project on October 23, 2001, in D.T.E. 01-63. Service to customers started in May of 2002. The Department has twice granted the Compact an extension of the Pilot Project, once for six months (through the end of 2003) in D.T.E. 03-61, and again in D.T.E. 03-99. In D.T.E. 03-99, the Department approved extension of the Pilot Project through December 31, 2004.

The purpose of this letter is to provide the Department with information regarding transition issues associated with termination of the 2004 Pilot Electric Supply Agreement between the Compact and Mirant Americas Retail Energy Marketing, LP ("Mirant") dated October 15, 2003 (the "Agreement"). The term of the Agreement expires December 31, 2004. Pursuant to Section 7.4(B) of the Agreement as originally drafted, all requirements power supply began on the first meter reading date in January of 2004, and will end on the last meter reading date prior to the expiration of the Agreement on December 31, 2004. It had been the Compact's understanding dating back to May of 2002 and lasting until recently, that Mirant always intended to provide service through the January meter reading dates following the end of the power supply term at the previous calendar year's prices. Over the course of the last few years and most recently in meetings to discuss when customers would transition to the Compact's new power supplier, Mirant indicated that customers would rollover to the Compact's new supplier during the January 2005 meter reading dates; thereby ensuring a smooth transition of

customers from Mirant to the Compact's new supplier, Consolidated Edison *Solutions*, Inc. ("ConEd *Solutions*").

On or about November 12th, Mirant first informed the Compact that it had a different interpretation of its obligations under the Agreement. Specifically, Mirant insisted that it had no obligation to serve customers after the December 2004 meter reading dates. The Compact had entered into a competitive electric supply agreement with ConEd *Solutions* to serve retail customers in 2005, but ConEd *Solutions* is not scheduled to commence delivery for each retail customer until the customer's first meter reading date in January 2005. Due to this new interpretation of the contract by Mirant, customers would have a gap in service of approximately one month between when Mirant would end service during the December meter reading dates and when ConEd *Solutions* would commence service to these same customers during their meter reading dates in January 2005.

For the past two weeks, the Compact and Mirant have engaged in numerous discussions regarding resolution of this dispute¹ and amending the Agreement to expressly provide for extension of the delivery term under the Agreement so that customers could transition directly to ConEd *Solutions* rather than be transferred to NStar service for the interim period.² Mirant and the Compact have reached agreement regarding the terms of service for the transition period which are set forth in the letter agreement which is attached to this letter as Exhibit A. Under the terms of the letter agreement, Mirant has agreed to extend its delivery term for each retail customer through the regular applicable meter read date currently scheduled for such customer in January 2005. The extension will allow the retail customers to transition directly from Mirant to ConEd *Solutions*. The contract price for the extended service will be 7.175 cents per kilowatt hour.

Compact counsel discussed the terms of the letter agreement with Jeanne Voveris, Esq. at the Department on December 2nd. She requested that the Compact provide the Department with written background information regarding the proposals evaluated by the Compact and how information regarding the transition period will be communicated to customers. The next few paragraphs of this letter respond to that request.

On or about November 12th, Mirant verbally notified the Compact that it intended to drop customers at their December meter reads. After several conference calls with

¹ The Compact notes that Mirant is presently operating pursuant to protection under Chapter 11 of the Federal Bankruptcy Act, and that any claim against it would be unsecured and, even if successful, likely to be subordinated to the claims of senior creditors.

² The Compact contacted Barry Perlmutter at the Department on November 30th to discuss transition issues and he informed the Compact that under the circumstances, avoiding transferring customers to NStar for the interim period would be an important consideration for the Department.

Mirant, Mirant agreed it would serve all customers at the contract price through December 31, 2004 but it would only be willing to serve customers in January of 2005 at the then extremely high market rate. The Compact rejected this proposal. Several other proposals were made over the next few weeks regarding how to provide service to customers during the transition period. The Compact elected to blend the contract price with market prices to minimize customer confusion and to provide one price for all customers, just as has been consistently the case under the Pilot since its inception in May 2002. The Compact was concerned that customers would not understand a) why they went from Mirant to NStar to ConEd *Solutions* over the span of two meter reads, nor b) differential pricing or transitional pricing consisting of twenty-one separate rates (i.e. one for each of the twenty-one billing cycles)³. In addition, NStar expressed concern that the unanticipated return of these customers for a one month period could potentially result in increased risk premiums on wholesale prices in the future for all customers in the other ComElectric areas.

When the Compact analyzed the cost implications to consumers, it was estimated that keeping a residential consumer with a Mirant blended rate versus the ConEd *Solutions* contract price commencing in January would cost the average residential consumer (500 kWh) approximately 3 cents on the generation portion of the bill. When the Compact evaluated the consequences of returning customers to NStar Default Service for one cycle, it found that at most, typical customers would have saved a few dollars on a one-time basis. Given the cost implications, consumer confusion and potential risk premium in light of the unfortunate timing of the disagreement with Mirant over the contract language, the Compact believes this is the best solution for all parties.

The Compact has kept ConEd *Solutions* up to date regarding the terms of the service during the transition period. ConEd *Solutions* has indicated that it understands and agrees to these terms.

Consumers will be advised of this transition via the Cape Light Compact website. The Compact intends to post this letter on its website and direct/advise consumers to call the Compact staff with questions. The Compact will also discuss this transition at its December 15, 2004, Board Meeting which is an open meeting and open to the public.

³ In other words, the price for each cycle would be based on the number of days each cycle had of service in December 2004 as opposed to January 2005.

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We hope that this letter has provided the Department with sufficient information regarding how transition issues will be addressed. If you require further information or have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

Jeffrey M. Bernstein

Counsel for the Cape Light Compact

JMB/aae

Enclosures

cc: Jeanne Voveris, Esq., Department of Telecommunications and Energy
Jeffrey R. Perry, Mirant (w/enc.) (via first class mail)
John J. Milton, NStar (w/enc.) (via first class mail)
Anthony Giorgio, ConEd *Solutions* (w/enc.) (via first class mail)
Margaret T. Downey, Cape Light Compact (w/enc.) (via first class mail)
W. Curtis Collyer (w/enc.) (via first class mail)
Jerrold Oppenheim, Esq. (w/enc.) (via first class mail)
Joseph Rogers, Esq. (w/enc.) (via first class mail)
Joseph W. Zdanovich (w/enc.) (via first class mail)
Steven Venezia, Esq. (w/enc.) (via first class mail)
Robert Werlin, Esq. (w/enc.) (via first class mail)
Michael S. Giaimo, Esq. (w/enc.) (via first class mail)
Paul W. Schrader (w/enc.) (via first class mail)
George E. Johnson (w/enc.) (via first class mail)

EXHIBIT A

LETTER AGREEMENT